

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK/NEWPORT NEWS DIVISION

CHARLES WESLEY MANN, Administrator
of the Estate of Elizabeth Frances
Mann, Deceased,

Plaintiff

v.

COPY

C.A. No. 83-477-N

H. K. PORTER COMPANY, INC., et al.
Defendants

IN RE: ALL CASES

C.P. 77-1

*The Deposition of
KENNETH NELSON
Taken Pursuant to Notice*

DATE November 12, 1985

TIME 9:00 a.m.

LOCATION Fort Magruder Inn
Williamsburg, Virginia

APPEARANCES RICHARD S. GLASSER, Esquire
Glasser & Glasser
Norfolk, Virginia

ROBERT R. HATTEN, Esquire
Patten, Wornom & Watkins
Newport News, Virginia

Counsel for Plaintiffs

AUDIO-VISUAL REPORTING SERVICES, INC.
700 East Main Street, Suite 1602
Richmond, Virginia 23219
(804) 644-2877

K. Nelson

253

1 KENNETH NELSON, recalled as a witness, having been
2 previously sworn, resumed the stand, was examined and
3 testified as follows:

4

5 EXAMINATION BY MR. GLASSER:

6 Q In generic terms, there is a pile of documents
7 in front of you, Mr. Nelson, which I would estimate to be
8 maybe three inches high comprising as your counsel has just
9 related to me of approximately forty-six documents. You
10 have had occasion during last night to look at each of these
11 documents?

12 A I have.

13 Q Is it your -- or are you able to identify
14 each of these documents?

15 A I am.

16 Q Are in fact each of these documents reports
17 that you have prepared during the time period of 1943 while
18 you were with the -- working on behalf of the Maritime
19 Commission and the United States Navy?

20 A Yes. Some of the reports are joint reports
21 of Mr. Clou.

22 Q But as to each, you are able to authenticate
23 them and to identify them?

24 A I am.

25 Q It's my understanding that in all but one of

K. Nelson

267

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1 A I do not recall that.

2 MR. HATTEN: All right. Let me mark that
3 exhibit we referred to as 80 -- Exhibit Number 80.

4 That is the 1944 safety survey that you indicated did
5 not relate to industrial hygiene.

6 (Marked by the court reporter as Nelson

7 Exhibit Number 80.)

8

9 BY MR. HATTEN:

10 Q All right. Now, Mr. Nelson, do you agree
11 that any risk of serious disease or death from asbestos should
12 be avoided if feasible and available means exist to eliminate
13 or reduce that risk?

14 MR. EDELL: Did he agree with that at the
15 time he was employed?

16 MR. HATTEN: Does he agree with it now?

17 MR. EDELL: I am going to direct him not to
18 answer.

19 MR. COHEN: I object.

20

21 BY MR. HATTEN:

22 Q In the 1940's as part of your industrial
23 hygiene responsibilities did you agree that any risk of
24 serious disease or death from asbestos exposure should be
25 avoided if feasible and available means existed to eliminate

22

1 or reduce that risk?

2 MR. COHEN: Objection.

3

4 BY MR. HATTEN:

5 Q Can you answer that question? Would you
6 agree with that statement?

7 A My responsibility was to report conditions
8 I observed that in my judgment might pose health hazards to
9 the people in that situation.

10 Q All right. Is your general response to the
11 question yes, that you do agree that any risk of death or
12 serious injury from asbestos exposure should be avoided if
13 feasible and available means exist to reduce or eliminate the
14 risk?

15 MR. EDELL: Can I have the question read
16 back, please, for the witness?

17 (The last question was read by the court
18 reporter.)

19 MR. EDELL: Was that his opinion when he was
20 in the Navy?

21 MR. HATTEN: Yes.

22 MR. COHEN: Objection.

23

24 BY MR. HATTEN:

25 Q Okay. Was that your opinion?

K. Nelson

260

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1 A Certainly if I saw any exposure which involved
2 potential danger to the worker or workers, I would recommend
3 the avoidance of such exposures or the protection against them
4 by use of protective equipment and/or ventilation.

5 Q All right. So for any recognized risk, if
6 there was feasible and available means to eliminate or reduce
7 the risk, you would try to do so; is that correct?

8 A Yes. I would try to do so.

9 Q All right. All right. Now, was it feasible
10 in the 1940's based upon your observations for warning labels
11 to have been placed on the packaging of the asbestos products
12 that the asbestos insulators were using? Was it feasible?

13 A I don't know. Asbestos products on the
14 insulation?

15 Q On the boxes. Was it feasible to put a
16 warning label on the boxes?

17 A So far as I know.

18 Q All right. And was there means available in
19 the 1940's when you were in the Navy to either stamp, glue,
20 or print warning labels on the packaging of asbestos products
21 that were used in the shipyards?

22 A That may have been done. It's possible.

23 Q All right. So would I be correct that you
24 know of no reason why it was either not feasible or not
25 possible for asbestos manufacturers to put a warning on the

24 1 cartons of their asbestos products that the product could
 2 possibly be dangerous; is that correct?

3 A It could have been done. It was not done.

4 MR. HATTEN: All right. Thank you. I
 5 think that's all. Thank you.

6 MR. N. SMITH: Is that it?

7 MR. HATTEN: Hope I didn't take much more
 8 than ten minutes.

9 MR. N. SMITH: A little more. If I might
 10 have a moment for a break, I would like to consider
 11 where I would like to go under the circumstances, and
 12 I might be able to save us some time.

13 (The deposition recessed at 9:40 a.m. At
 14 9:55 a.m. the deposition continued as follows:)

15 MR. GLASSER: What I'm going to do, Ron,
 16 starting with Exhibit 32 is simply read a date to you
 17 and put a number in the right-hand corner and ask you
 18 to officially accept it as an exhibit. These are
 19 from the pile that I referred to roughly three inches
 20 high that Mr. Nelson has identified.

21 The one from January 18, 19, 20, 1943, of the
 22 Brave Corporation Shipyard --

23 THE WITNESS: I'm sorry. I think that is
 24 Gravco, isn't it?

25 MR. GLASSER: The witness is right.